

Supervisor Lesko and Councilwoman Bonner Announce Appeals Court Victory Preserving Recreational Zoning in Rocky Point Drive-In Case

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Community has fought against plans for a Walmart, Lowe's, and Target at the location for years



Pictured left to right are Supervisor Mark Lesko, Maureen Liccione, a partner in the law firm of Jaspan Schlesinger who served as outside council for the case and Councilwoman Jane Bonner.

Farmingville, NY - Supervisor Mark Lesko and Councilwoman Jane Bonner announced that Town won the New York State Supreme Court Appellate Division case on the property formerly occupied by the Rocky Point Drive-In on Route 25A. The four judge appellate panel rejected and overruled the Suffolk Supreme's Court's green light for "big box" retail development at the site. The property owner had previously challenged the Town's up-zoning of the 18-acre property from retail to recreational, which does not allow big-box stores. The community has fought a big-box store at this location for years.

"This case has been going on for over 10 years, and we are happy that a decision has been made which is in the best interest of the Rocky Point community and the residents of Brookhaven Town," said Supervisor Lesko, "I will work with Councilwoman Bonner and residents to help ensure any redevelopment of this property is consistent with recreational zoning."

"The Rocky Point Drive-In has remained blighted for so many years because of the owner's ongoing and ultimately meritless litigation, but maybe now it will be put to good use," said Councilwoman Bonner. "At one time it was on the list of receiving areas in the Carmans River Protection Plan, but that is no longer the case. I felt that high density housing was not compatible with the site and it was my recommendation to have it removed."

In 2000, the Town of Brookhaven commenced the process to up-zone the property from Retail (J-2) to Commercial/Recreational consistent with the Town's Comprehensive Plan. Upon learning of the Town's proposal, the property owner of the Rocky Point Drive-In brought an application before the Town to construct a Lowe's, which he claimed was a permitted use under the original zoning. The owner brought several lawsuits against the Town, challenging the up-zoning and also claiming that the Town intentionally and maliciously delayed hearing the Lowe's application until after the up-zoning was approved by the Town Board. Despite the fact that a commercial center was not a permitted use under J-2, the Suffolk Supreme Court ruled in favor of the plaintiff that a Lowe's could go forward

without variances. The Town subsequently appealed and, in the meantime, Lowe's withdrew from the project. In 2008, Councilwoman Jane Bonner reached an agreement with Walmart not to build at the site and last fall, the owner indicated that it now planned to construct a Target store on the site.

On March 7, 2012, the New York State Supreme Court Appellate Division completely reversed the Suffolk County Supreme Court's original decision, stating that there was no intentional delay or malice on the part of the Town and that the Commercial/Recreational zoning was to remain in place.

"The record does not support the [Suffolk Supreme Court's] determinations of undue delay and bad faith... or that the [Town] selectively enforced the prohibition against commercial centers in J-2 zoning districts," the court wrote in its decision. The court additionally dismissed the plaintiff's cross-appeal and awarded a bill of defense costs to the Town.

Richard Johannesen, former president and Land Use Chair of the Rocky Point Civic Association said, "I'd like to thank Supervisor Lesko and Councilwoman Bonner for standing by the community in its efforts to preserve the character of Rocky Point. This decision to protect the recreational character of the driving range site would not have been possible without our elected officials supporting our efforts to establish the community we envision."

Rocky Point resident John Sinnot said, "We are happy the issue of this property has been resolved and is now behind us. We look forward for this property to be used for its original recreation purpose in the future which would be best suited for the Rocky Point Community. On behalf of the members of Don't Target Rocky Point and the Pickwick Beach Association, thank you Jane Bonner for being a great Councilperson and advocate for Rocky Point."

The Rocky Point Drive-In was opened in the early 1960's and closed in the late 1980's, and was subsequently opened as a golf driving range, which has also been closed for years.



Pictured left to right are Executive Director of the Pine Barrens Society Dick Amper, Councilwoman Jane Bonner, Supervisor Mark Lesko and Maureen Liccione, a partner in the law firm of Jaspán Schlesinger who served as outside council for the case



Aerial map of the 18 acre Rocky Point Drive In property.

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